

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**Allen Brockshus,
Osceola County, Iowa**

ADMINISTRATIVE ORDER

NO. 2011-AQ-05

NO. 2011-SW-08

To: Allen Brockshus
1062 - 27th Street
Spirit Lake, Iowa 51360

I. SUMMARY

This order requires you to immediately cease all illegal open dumping and open burning at any location in the State of Iowa and specifically at the site described in this order, and to pay a penalty of \$1,000.00, subject to your appeal rights stated in this order.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Cindy Martens
Iowa Department of Natural Resources
Field Office No. 3
1900 N. Grand
Gateway North, Suite E17
Spencer, Iowa 51301-2200
Phone: 712/262-4177

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code

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chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. On July 20, 2010, Cindy Martens of DNR Field Office No. 3 observed some very black smoke coming from an illegal open burn pile located at 2377 Van Buren Avenue in Hartley, Osceola County, Iowa (the site). The site is owned by Allen Brockshus, 1062 - 27th Street, Spirit Lake, Iowa 51360.

2. Ms. Martens arrived at the site about 11:10 am and found a bulldozer operator pushing trees into a burn pile. The burn pile contained a demolished corn crib and trees. There was very black smoke coming from the burn pile in four or five specific areas, indicating the presence of burning tires.

3. At the site, Ms. Martens spoke with one of the workers, Dustin Glade, who was cutting up trees with a chain saw. Mr. Glade reported that he was working for Rocky Marco, owner of Mega Inc., of Osceola, Iowa. Mr. Glade stated that the burn pile contained an old corn crib made of steel and wood. The pile also contained debris from a grove of trees. Ms. Martens asked about the presence of black smoke from the burn pile, and Mr. Glade stated that the owner of the site, Allen Brockshus, had come out and thrown four or five tires onto the pile and then started the fire. Ms. Martens remained at the site until about 11:30 am, and the burn pile continued to burn and emit very black smoke during that time. Ms. Martens took photographs of the burn pile to document the violations.

4. After leaving the site, Ms. Martens found a phone number for Rocky Marco. She called the phone number on July 22, 2010, and asked to speak with Mr. Marco and to get contact information for Mr. Brockshus. The person who answered the phone refused to provide any information. Ms. Martens left a message for Mr. Marco, who did not return her phone call. Ms. Martens left a second message for Mr. Marco on an answering machine on July 26, 2010, but he did not return her calls.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2)

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(variances) and 23.2(3) (exemptions). The burning of rubber tires is specifically prohibited. 567 IAC 23.2(3)(d) provides that "[r]ubber tires shall not be used to ignite landscape waste originating on the premises." 567 IAC 23.2(3)(i) provides that "[r]ubber tires shall not be used to ignite agricultural structures." The above facts demonstrate violations of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The illegal disposal of waste tires in this case demonstrates non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders Allen Brockshus to do the following:

1. Immediately halt improper illegal open dumping and open burning of waste materials at any location in the State of Iowa and specifically at the site described in this order; and comply in the future with all state and local requirements regarding the proper disposal of solid waste and the prohibition against illegal open burning; and

2. Within 45 days of the date of this order, pay a penalty of \$1,000.00.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$1,000.00 is assessed. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this rule, DNR has

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determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Allen Brockshus has achieved an economic benefit from open burning and improper waste disposal. Allen Brockshus has saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the solid wastes from the site. Proper disposal of the solid wastes dumped and burned at the site would have required payment of landfill tipping fees and transportation costs. Based on these considerations, \$100.00 is assessed for this factor.

Gravity of the Violation – The burning of solid wastes releases hazardous air pollutants, particulate matter, and other pollutants. These air pollutants pose a health risk to persons breathing, particularly persons with pre-existing respiratory problems. Further, the pollutants resulting from open burning may pollute groundwater, and pose a risk to both human health and the environment. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Further compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above considerations, \$600.00 is assessed for this factor.

Culpability – Allen Brockshus has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Therefore, \$300.00 is assessed for this factor.

VII. APPEAL RIGHTS

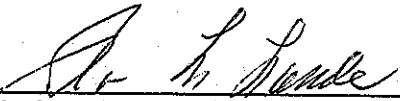
Pursuant to Iowa Code sections 455B.138 and 455B.308 and 561 IAC 7.4(1), a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this order

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constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order.



Roger L. Lande, Director
Iowa Department of Natural Resources

Dated this 27th day of
March, 2011.

Osceola County Air Quality file; Anne Preziosi; DNR Field Office 3; VII.C.2